

Arrest scripts for civil arrests under injunctions

Civil injunctions: police enforcement actions under Court Orders (non-Criminal Code)

Arrest details and scripts for the Civil Injunction:

1. Read aloud the Injunction and police enforcement clauses to persons who are violating the terms of the Court Order. Distribute paper copies of the Injunction to violators to ensure that they have the full Order.
2. Ensure that violators can clearly hear the reading of the Injunction. To the best of your ability, ensure that the violators understand and acknowledge their awareness of the terms of the Injunction, and that they understand that the Injunction applies to each of them.
3. Give violators a brief period of time to stop the activity that is violating the court order. Tell violators that if they do not cease the activity that is violating the court order, they may be arrested and removed by the OPS. Violators should understand that they may face criminal charges and/or civil contempt proceedings and/or criminal contempt proceedings in Court.
4. Tell violators that if they immediately cease the activity that is violating the court order, they can stand by and participate in lawful advocacy, protest and dissent (freedom of expression), but only if those actions do not violate the Injunction.¹
5. If violators do not cease the activity that is violating the court order, proceed through this escalating range of actions:
 - A. Make an appeal to cease the activity that is violating the court order, as defined by the injunction, explain your request.
 - B. Make an additional appeal to cease the activity that is violating the court order: explain the implications of a civil arrest (arrest, detention, transportation to a Superior Court Registry to appear before a Judge; possible fines and imprisonment; possible difficulties in the future for foreign travel).
 - C. Make a final appeal: say these words – *“Is there anything I can reasonably say or do to make you cooperate?”*
 - D. Take action: arrest or removal. Use of force must be reasonable in the circumstances and proportionate to what is required to effect the arrest and/or removal.
6. If violators do not cease the activity that is violating the court order after the warning in section 4 above, and if the OPS exercises its discretion and arrests violators under the Injunction, recite these four statements:
 - "A. You are under arrest for civil contempt of the Order and Injunction pronounced by the Ontario Superior Court of Justice on February 7, 2022. If you agree in writing to follow the conditions set by the Superior Court, a police officer will release you on your promise to appear before a Judge of the Superior Court on a date to be determined. You must obey the release conditions, or you will be re-arrested without the option of release.
 - B. If you do not agree in writing to follow the conditions set by the Superior Court, you will be arrested

¹ A warning provided to the individual is to be documented via RMS. If the individual fails to identify, a police officer may use their discretion to charge the individual for obstruct in accordance with section 129 *Criminal Code*.

and detained by the OPS until you can be brought before the Superior Court to answer for your violation of the Court's Order.

C. Continuous, flagrant violation of the Superior Court's Order and Injunction may result in civil contempt proceedings and criminal contempt prosecutions against you.

D. Do you understand this process?"

7. If violators are arrested, the arrest occurs under the authority of the Court Order and Injunction and is not a section 495 *Criminal Code* arrest. Police must give the *Canadian Charter of Rights and Freedoms* cautions (section 10(a): reason for arrest and detention; section 10(b): right to consult a lawyer in private) and a police warning. Arrested violators should be cautioned that anything they say may be used against them in Court. Police who participate in arrests under the Injunction may be called as witnesses in civil contempt trial proceedings. The standard requirement for use of reasonable force in the circumstances applies to arrests under civil injunctions.

8. If violators are arrested and the violators refuse to sign the undertaking to comply with the court order, police must hold the violators for the next available Judge of the Superior Court of Ontario. Violators must be taken directly to the Superior Court, subject to detention arrangements established by the OPS. Where violators are arrested under the Court Order and Injunction, they are not eligible for bail hearings and Justice of the Peace release arrangements which apply to criminal charges.

9. In all documents, the "charging section" is not a section in the *Criminal Code*. For arrests under the injunction, do not charge under section 127 *Criminal Code* (violate Court order). Instead, the "charge" is noted in section 6A above: "civil contempt of the Order and Injunction pronounced by the Superior Court of Justice on February 7, 2022."

10. When violators appear before a Judge of the Superior Court, the Judge will determine the detention and release status of each violator. If the violator promises in Court to obey the Injunction, the violator may be released with a Court date for future civil contempt hearings.

11. Police have operational discretion in taking enforcement actions against violators. The Injunction and power of civil arrest are extra tools in the police duty belt, but cannot be disregarded without good operational reasons based on public interest concerns: public safety; police officer safety; availability of sufficient resources. The Courts will be patient with police in the face of operational delays, to a reasonable but limited extent.

12. During enforcement actions, police have common law authority to create safety zones to keep violators and spectators at a safe distance from police operations. This includes temporary blocking of highways and private property. Police have legal authority to take enforcement measures that temporarily interfere with freedom of movement of the public, to the extent reasonably necessary in the circumstances. Persons who interfere with police operations under the Court Order and Injunction, as well as in the OPS's keeping the peace and enforcing the *Criminal Code* duties, may be subject to arrest for criminal charges, including section 31 (breach of the peace), section 129 (obstructing a peace officer), section 175 (causing a disturbance), section 264.1 (uttering threats), sections 266-270 (assault and assault P.O.), section 351(2) (mask or disguise while committing indictable offence), section 423(1) (intimidation, persistent following, watching and besetting, blocking highways), and section 430(1) (mischief to property).

13. Take good notes and be prepared to articulate the legal authorities for all enforcement actions taken by police. What was the lawful objective of those actions? How much force was necessary in the circumstances?